IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
v.))	Cr. A. No. 1209015544
CHRISTOPHER GEARY,)	Arr. No. T011206378
Defendant.)	

Submitted: July 2, 2013 Decided: August 1, 2013

Daniel G. Simmons, Esquire Deputy Attorney General Delaware Department of Justice 820 N. French Street, 7th Floor Wilmington, DE 19801 Attorney for the State Joel H. Fredricks, Esquire
Casarino, Christman, Shalk, Ransom &
Doss, P.A.
405 N. King Street, Suite 300
P.O. Box 1276
Wilmington, DE 19899
Attorney for Defendant

CORRECTED MEMORANDUM OPINION AND ORDER

Defendant Christopher Geary ("Defendant") was arrested on September 21, 2012, during a stop at a sobriety checkpoint ("Checkpoint") and charged with the offense of driving under the influence of alcohol ("DUI offense") in violation of 21 *Del. C.* Section 4177(a)(1). On March 28, 2013, Defendant filed a motion to suppress ("Motion") contending, among other things, that the initial detention of Defendant was not based on a reasonable, articulable suspicion that criminal activity was afoot; that the DUI Checkpoint was not properly conducted because it was

moved from the approved site to an unapproved site one-quarter mile away;¹ there was no evidence indicating why the Checkpoint site was chosen; and, there was no evidence that procedure was followed while conducting the Checkpoint. As such, Defendant contends, the State failed to comply with the Fourth Amendment of the United States Constitution.

The State counters that the location of the Checkpoint, given its close proximity to the intersection of approval, satisfies the requirements of the Fourth Amendment. Additionally, the documentation submitted at the evidentiary hearing demonstrates that the Checkpoint was established, conducted, and operated pursuant to the requirements of the Fourth Amendment. On April 29, 2013, the Court held an evidentiary hearing on the Motion. At the conclusion of the hearing, the Court reserved decision, pending additional briefing.

PROCEDURAL BACKGROUND

On September 21, 2012, Defendant was arrested and charged with the DUI offense. On February 7, 2013, Defendant pled not guilty, waived his right to a jury trial, and a bench trial was set for April 29, 2013. The Motion was filed on March 28, 2013. The Court scheduled an evidentiary hearing for the same date as the trial, April 29, 2013.

At the hearing, the State called one witness, Corporal Yeldell, of the Delaware State Police. Corporal Yeldell was the investigating and arresting officer at the Checkpoint. The evidence and testimony submitted and presented reveals that Corporal Yeldell was not the officer charged with supervising the establishment and operation of the Checkpoint. Additionally, the State sought to introduce the following exhibits into evidence:

- 1. Approved Sobriety Checkpoint Request Form for Grid 074-336;
- 2. Copy of Office of Highway Safety ("OHS") Sobriety Checkpoint Procedures;

¹ The approved site was listed as grid 074-336; the site where the DUI Checkpoint was conducted was listed as grid 068-334.

- 3. 2011 Delaware State Police Crash Statistics for grid 074-336;
- 4. September 20, 2012, News Release documenting 10 DUI arrests made in September 2012;
- 5. Sobriety Checkpoint Statistical Reporting Form for September 21, 2012.

At the conclusion of the hearing, the Court reserved ruling and set a briefing schedule. The final brief on the matter was received on July 2, 2013.

FACTS

At the hearing, the State called Corporal Yeldell of Troop 1 of the Delaware State Police to testify. Corporal Yeldell testified to the following: Corporal Yeldell has been employed by the Delaware State Police for over four years. Before that, Corporal Yeldell was employed by the New Castle County Police Department for four years. Corporal Yeldell he has been involved with approximately 150 DUI investigations. According to Corporal Yeldell, the Checkpoint in question was approved at grid 074-336, an intersection of Salem Church Road and Old Baltimore Pike. However, Salem Church Road intersects with Old Baltimore Pike in two separate places, and Corporal Yeldell was unable to identify which of the two intersections corresponded to the approved grid.

On September 21, 2013, Corporal Yeldell was one of 26 officers who established the Checkpoint at 10:00 p.m. The approved location for the Checkpoint was to be at the approved intersection, but it was deemed to be an unsafe location to conduct a Checkpoint. Corporal Yeldell testified that, in accordance with Delaware State Police Procedure, the supervisor of the Checkpoint, Newport Police Department Chief Michael Capriglione, has the authority to move the Checkpoint to a location adjacent to the approved area, for the purpose of conducting the Checkpoint safely. It is for this reason that the Checkpoint was moved approximately one-

quarter of a mile away from the approved location. Corporal Yeldell testified that, according to the policy, the Checkpoint operators are instructed to set up signs indicating that the motorist is entering a sobriety Checkpoint, and officers are to wear reflective vests and gear indicating they are the Delaware State Police. Officers have no discretion in the manner in which the Checkpoint is operated, or who can be stopped; every vehicle entering the Checkpoint is to be stopped. If there are no signs of intoxication, the car is to be immediately released.

Corporal Yeldell testified that around 10:55 p.m. he encountered the Defendant driving a red Dodge SUV through the Checkpoint. After detaining the vehicle and performing a series of tests on Defendant, Corporal Yeldell arrested and charged Defendant with DUI.

DISCUSSION

a. The Legal Standard

It is well established in Delaware that, on a motion to suppress evidence seized in a warrantless search, the burden of proof is on the State.² Both the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution protect citizens of this State from "unreasonable government searches and seizures."³ It is well settled that the "temporary detention of individuals during the stop of an automobile by police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' within the meaning of" the Fourth Amendment.⁴ A determination of the reasonableness of a seizure requires a balancing of "the public interest and the individual's right to personal security free from arbitrary interference by

² Hunter v. State, 783 A.2d 558, 560 (Del. 2001); State v. Flonnory, 2013 WL 3327526, at *3 (Del. Super. June 12, 2013).

³Moore v. State, 997 A.2d 656, 663 (Del. 2010).

⁴ Whren v. United States, 517 U.S. 806, 809-10 (1996).

law officers."⁵ "The United States Supreme Court has articulated a test that balances the state's interest in preventing injury and damage caused by drunk driving and the effectiveness of sobriety checkpoints as a means of prevention versus a level of intrusion on individual privacy as a result of a checkpoint."⁶

In Delaware, sobriety checkpoints are found to be constitutionally sound, reasonable seizures where "procedures are in existence to ensure that cars passing through checkpoints are stopped in a reasonably safe manner and that sufficient safeguards are in place limiting the discretion of law enforcement officers with respect to the location of each checkpoint and the stopping of vehicles."

An overarching theme throughout DUI checkpoint case law is that the police officers conducting the suspicion-less stops must not have "unfettered discretion" in the formulation and execution of checkpoint stops.⁸ In *State v. Cook*, the Delaware Superior Court explained:

[I]n all of the cases upholding the constitutionality of a suspicion-less checkpoint stop there has been a pre-existing plan which limited the discretion of the officers in deciding which cars to stop. Although it is not always clear whether the restriction on discretion emanates from the Fourth or Fourteenth Amendment (or both), it is safe to say that absent such a restriction the checkpoint will not pass constitutional muster.⁹

In Delaware, sobriety checkpoints are operated pursuant to Delaware State Police Department policy guidelines.¹⁰ The policy guidelines describe the objective criteria for choosing the location of the checkpoint, including: the selection of the location, visibility of the checkpoint, appropriate actions for determining sobriety, and requirements for a supervisor to

⁵ Brown v. Texas, 443 U.S. 47, 50 (1979) (quoting Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)).

⁶ State v. Terry, 2013 WL 3833085, at *3 (Del. Super. July 18, 2013).

Id.

⁸ State v. Cook, 2013 WL 1092130, at *3, 5 (Del. Super. Feb. 13, 2013).

⁹ *Id.* at *3.

¹⁰ Terry, 2013 WL 3833085, *3.

monitor the checkpoint to compile the results of the checkpoint.¹¹ "The policy guidelines, act as a substitute for the reasonable requirements of the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution." Deference will be given to the police in their decisions surrounding the establishment and execution of DUI checkpoints.¹³ However, for the checkpoint to meet the "reasonableness" requirement, there must be a reasonable nexus between the location of the checkpoint and the State's interest in preventing drunk driving.¹⁴

b. The State failed to establish that the Checkpoint was reasonable.

In this case, the State fails to prove that the Checkpoint and the seizure of Defendant complied with constitutional standards. The State relied on the testimony of Corporal Yeldell and the "Checkpoint Documents" referenced at the evidentiary hearing. Corporal Yeldell's testimony did indicate that the Checkpoint itself was conducted in compliance with a pre-existing plan. Specifically, Corporal Yeldell testified that the plan called for a well-lit area, the posting of signs, uniformed police officers in safety vests, the use of cones, the stopping of every vehicle, and the types of questions asked. However, this testimony alone is not enough for the State to meet its burden of demonstrating that the seizure of Defendant at the Checkpoint was reasonable under the Fourth Amendment of the United States Constitution and Article, 1 Section 6 of the Delaware Constitution. Corporal Yeldell was unable to testify to the reasoning behind the selection of the Checkpoint's location. Furthermore, Corporal Yeldell was unable to testify to the necessary statistical analysis that went into the location choice, aside from reading the documents provided by the State.

¹¹ *Id*.

¹² *Id*.

¹³ *Id.* at *5.

¹⁴ See Id.

Pursuant to the policy guidelines, one of the following must be satisfied for a checkpoint to be set at a particular location: either (1) at least ten percent (10%) of the total DUI arrests must have occurred on a given roadway, or; (2) at least five percent (5%) of the total DUI arrests and one alcohol-related personal injury crash. Here, the documents submitted by the State contained only raw data. There was no evidence of the statewide total number of DUI arrests made within the timeframe of the proposed Checkpoint.

Even if the statistics were available to the defense to challenge the selection of the Checkpoint, the State has failed to introduce any evidence to establish the actual location of the approved site for the Checkpoint. There are two locations where Salem Church Road crosses Old Baltimore Pike. Corporal Yeldell was unable to identify which of these two intersections was the approved location, and the distance between these intersections was not introduced into evidence. Therefore, while Corporal Yeldell testified that the location was moved approximately a quarter of a mile, the Court is unable to determine how far the Checkpoint was located from the approved location, since the approved location was never definitively established.

Finally, although it is true that a checkpoint may be moved for officer safety, the OHS manual requires that it be within the approved area or an area adjacent to the Checkpoint which feeds into the problem area. Even if the State established the actual location of the approved Checkpoint, and that the Checkpoint was established at an appropriate alternative, adjacent location, the State failed to adduce any testimony that the alternate location was either within the approved area or in an adjacent area which feeds into the problem area.

¹⁵ See Office of Highway Safety Sobriety Checkpoint Procedures, ¶5. See also State v. Gonzalez-Ortiz, 2007 WL 549907 (holding that based on safety concerns, the supervising officer may move the checkpoint within the area authorized by OHS).

The State relies on State v. Cook in its contention that it is not obligated to comply with the Policy Guidelines to prove the establishment and operation of the Checkpoint satisfies the Fourth Amendment and the Delaware Constitution. In Cook, the Delaware Superior Court upheld a checkpoint which was found to be "operated in a reasonable manner pursuant to a neutral plan which limited the police officers' discretion." Here, the State has failed to establish that the Checkpoint was operated in a reasonable manner pursuant to a neutral plan. The State has also failed to establish that the Checkpoint was operated in a manner that limited the police officers' discretion. The evidence and testimony presented by the State failed to establish the approved location of the Checkpoint; failed to demonstrate that the Checkpoint as established was within the original approved area or appropriately adjacent to the approved area, and failed to demonstrate the statistical analysis to evidence the public interest for either the intended or established location of the Checkpoint. Therefore, the State failed to meet its burden of showing that the Checkpoint was reasonable under Fourth Amendment and Delaware Constitution.

ORDER

For the foregoing reasons, the Court **GRANTS** the Motion and suppresses all evidence obtained during the seizure of Defendant at the Checkpoint.

The matter will now be set for trial, pending any motions filed by either party.

IT IS SO ORDERED.

The Honorable Carl C. Danberg,

Judge

Diane Healy, CCP Judicial Case Manager

cc:

¹⁶ Cook, 2013 WL 1092130, at *5.